

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
GLAFIRO GONZALEZ,
Defendant.

No. 1:03-cr-05165-JLT

ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE

(Doc. 656)

Glafiro Gonzalez moves the Court for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (Doc. 656.) Gonzalez, along with the supplemental filing by his court-appointed attorney (Doc. 665), argues that extraordinary and compelling reasons exist for relief due to substantial changes to sentencing law. Specifically, Gonzalez argues that under the First Step Act, his prior drug conviction no longer triggers the enhanced mandatory minimum that applied under the previous regime. The government opposes the motion. (Doc. 670). For the reasons explained below, Gonzales's motion is **DENIED**.

BACKGROUND

On March 3, 2005, a jury found Gonzalez guilty of conspiracy to distribute methamphetamine and three counts of distribution of methamphetamine. (Docs. 393, 396.) Because of a prior drug felony, Gonzalez's mandatory minimum sentence was 240 months pursuant to 21 U.S.C. § 851. (Doc. 377.) The PSR found that Gonzalez was responsible for

1 selling 45.36 kilograms of a mixture containing methamphetamine, resulting in a base offense
2 level of 38. (PSR ¶¶ 31–32; *see also* Doc. 628 at 2.) The PSR recommended a three-level
3 increase for Defendant’s aggravating supervisory role in the conspiracy, (PSR at ¶¶ 35–38),
4 resulting in a recommended adjusted offense level of 41, (*id.* ¶ 39). Gonzalez’s criminal history
5 computation resulted in 14 criminal history points, with a criminal history category of VI. (*Id.* at
6 ¶¶ 43–68.) The resulting Guidelines range was 360 months to life. (*Id.* at 26; *id.* at ¶ 103.) The
7 PSR recommended a sentence of 360 months. (*Id.* ¶ 106.)

8 On June 21, 2005, the Court found that the quantity of methamphetamine involved in the
9 crimes resulted in a base offense level of 38, with a two-level increase for Gonzalez’s supervisory
10 role in the conspiracy. The total offense level of 40 resulted in a Guidelines range of 360 months
11 to life, but the Court departed downward and imposed a sentence of 300 months. (Doc. 434; *see*
12 *also* Doc. 665-1 at 109.)

13 Since being sentenced, Gonzalez has filed a number of motions for relief. (*See* Docs. 554,
14 617, 635, 642; *see also* *Gonzalez v. Langford*, No. 2:17-cv-06217-R-MRW, 2017 WL 6271256
15 (C.D. Cal. Nov. 27, 2017).) All of these motions have been unsuccessful. Gonzalez now requests
16 that the Court grant relief on the grounds that his sentence would be lower if imposed today under
17 the 2018 First Step Act.

18 Gonzalez is currently serving his sentence at USP Lompoc and is scheduled for release on
19 March 27, 2027. *Find an inmate*, FEDERAL BUREAU OF PRISONS, <https://www.bop.gov/inmateloc/>
20 (last visited December 23, 2022).

21 **LEGAL STANDARD**

22 A court generally “may not modify a term of imprisonment once it has been imposed.” 18
23 U.S.C. § 3582(c); *see also Dillon v. United States*, 560 U.S. 817, 824 (2010) (“[A] judgment of
24 conviction that includes [a sentence of imprisonment] constitutes a final judgment’ and may not
25 be modified by a district court except in limited circumstances.”). Those limited circumstances
26 include compassionate release in extraordinary cases. *See United States v. Holden*, 452 F. Supp.
27 3d 964, 968 (D. Or. 2020). Under the First Step Act of 2018 (“the FSA”) imprisoned defendants
28 may bring their own motions for compassionate release in the district court. 18 U.S.C.

§ 3582(c)(1)(A) (2018). In this regard, the FSA specifically provides that a court may

upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf¹ or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable, if it finds that –

- (i) extraordinary and compelling reasons warrant such a reduction; or
 - (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the [BOP] that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission[.]

18 U.S.C. § 3582(c)(1)(A)(i) and (ii).

The policy statement with respect to compassionate release in the U.S. Sentencing Guidelines sets out criteria and circumstances describing “extraordinary and compelling reasons.” U.S. Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.13;² *see also United States v. Gonzalez*, 451 F. Supp. 3d 1194, 1197 (E.D. Wash. 2020) (noting that courts “universally” rely on U.S.S.G. § 1B1.13 to define “extraordinary and compelling reasons,” even though that policy statement was issued before Congress passed the FSA and authorized defendants to file compassionate release motions). However, the Ninth Circuit has held “that the current version of U.S.S.G.

¹ If the BOP denies a defendant's request within 30 days of receipt of such a request, the defendant must appeal that denial to the BOP's "Regional Director within 20 calendar days of the date the Warden signed the response." 28 C.F.R. § 542.15(a). If the Regional Director denies a defendant's administrative appeal, the defendant must appeal again to the BOP's "General Counsel within 30 calendar days of the date the Regional Director signed." *Id.* "Appeal to the General Counsel is the final administrative appeal." *Id.* When the final administrative appeal is resolved, a defendant has "fully exhausted all administrative rights." See 18 U.S.C. § 3582(c)(1)(A).

² The Sentencing Guidelines also require that to be granted a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A), the defendant must not pose “a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” U.S.S.G. § 1B1.13(2).

1 §1B1.13 is not an ‘applicable policy statement[]’ for 18 U.S.C. § 3582(c)(1)(A) motions filed by
2 a defendant.” *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021). “In other words, the
3 Sentencing Commission has not yet issued a policy statement ‘applicable’ to § 3582(c)(1)(A)
4 motions filed by a defendant.” *Id.* The Ninth Circuit clarified that “[t]he Sentencing
5 Commission’s statements in U.S.S.G. § 1B1.13 may inform a district court’s discretion for
6 § 3582(c)(1)(A) motions filed by a defendant, but they are not binding.” *Id.* (citing *United States
7 v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020)). Finally, a defendant bears the burden of
8 “establish[ing] his eligibility for compassionate release.” *United States v. Wright*, 46 F.4th 938,
9 951 (9th Cir. 2022).

ANALYSIS

To qualify for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), a court must consider three requirements:

First, as a threshold matter, the statute requires defendants to exhaust administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Second, a district court may grant compassionate release only if “extraordinary and compelling reasons warrant such a reduction” and “that such reduction is consistent with applicable policy statements issued by the Sentencing Commission. *Id.* Third, the district court must also consider “the factors set forth in Section 3553(a) to the extent that they are applicable.” *Id.*

18 *United States v. Rodriguez*, 424 F. Supp. 3d 674, 680 (C.D. Cal. 2019); *see also United States v.*
19 *Ramirez-Suarez*, 16-CR-00124-LHK-4, 2020 WL 3869181, at *2 (N.D. Cal. July 9, 2020);
20 *Parker*, 461 F. Supp. 3d at 973–74; *United States v. Trent*, No. 16-cr-00178-CRB-1, 2020 WL
21 1812242, at *2 (N.D. Cal. Apr. 9, 2020) (noting that as to the third factor, under 18 U.S.C. §
22 3582(c)(1)(A) release must be “consistent with” the sentencing factors set forth in §3553(a)).

A. Administrative Exhaustion

Pursuant to 18 U.S.C. § 3582(c)(1), an inmate may only file a motion for sentence reduction after the Bureau of Prisons denied his request or after 30 days have passed since BOP received his request. The government does not contest that Gonzalez has met the exhaustion requirement; therefore, the Court will address the merits of Gonzalez's motion.

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1 **B. Extraordinary and Compelling Reasons**

2 Gonzalez argues that the Court should grant his motion because changes in the First Step
3 Act created an extraordinary and compelling disparity between Gonzalez's sentence and the
4 guidelines applicable for similar conduct today. (Doc. 665 at 6.) The 2018 FSA "limited
5 mandatory minimum enhancement based on prior drug convictions along two axes—the length of
6 the mandatory minimums and the range of offenses that trigger mandatory minimums in the first
7 instance." *United States v. Lii*, 528 F. Supp. 3d 1153, 1160 (D. Haw. 2021). The Ninth Circuit
8 has recently confirmed that the Court may consider non-retroactive changes to sentencing law,
9 such as the FSA, in evaluating compassionate release motions. *United States v. Chen*, 38 F.4th
10 1092, 1099 (9th Cir. 2022) (citing *Concepcion v. United States*, 142 S. Ct. 2389, 2396 (2022).)

11 Relevant to Gonzalez's case, the FSA reduced the enhanced mandatory minimum for one
12 prior felony drug conviction from 20 years to 15 years and changed the type of drug conviction
13 that triggers the enhancement. Prior to 2018, anyone who had a prior "felony drug offense," such
14 as Gonzalez's 1999 conviction for transportation of a controlled substance, was subject to an
15 enhanced mandatory minimum for a subsequent violation of 21 U.S.C. § 841(b)(1)(A). *See* 21
16 U.S.C. § 802(44). Defendants sentenced after the First Step Act, however, are not subject to an
17 enhanced mandatory minimum sentence unless they have prior convictions for one or more
18 "serious drug felon[ies]," as defined in 21 U.S.C. § 802(57) and 18 U.S.C. § 924(e)(2). *See* 21
19 U.S.C. § 841(b)(1)(A). Gonzalez argues that his 1999 felony is not "serious" because the
20 maximum punishment for it is between 4 and 9 years—less than the 10 years that § 924(e)(2)
21 requires. (Doc. 665 at 15.) Without the prior conviction qualifying as a "serious" drug offense,
22 Gonzalez argues that he would not be subject to a 20-year mandatory minimum for the charges in
23 this case. (*Id.* at 15–16.)

24 The Court need not address the substance of whether Gonzalez's prior conviction would
25 subject him to a mandatory minimum if he were sentenced today. This is because Gonzalez's
26 Guidelines range was—and remains—far above the mandatory minimum of which he complains.
27 As stated previously, the sentencing court departed downward significantly to sentence Gonzalez
28 to five years *fewer* than the Guidelines initially suggested. And even with this reduction,

1 Gonzalez's sentence amounts to five years *more* than the mandatory minimum applicable to his
2 conduct at the time of sentencing.

3 Though Gonzalez argues that the FSA created a "sentencing disparity" which now
4 presents extraordinary and compelling reasons for relief, he has not actually presented facts
5 suggesting that his Guidelines or ultimate sentence would or should be different if he were
6 resentenced under the FSA's changes. *See United States v. Gomez*, No. CR 05-00300 JMS (01),
7 2021 WL 1240621, at *6 (D. Haw. Apr. 2, 2021), *aff'd*, No. 21-10113, 2022 WL 543080 (9th Cir.
8 Feb. 23, 2022) (a reduction in the mandatory minimum may be irrelevant where the imposed
9 sentence remains close to the applicable Guidelines range). It is insufficient for Gonzalez to
10 speculate that the mandatory minimum applicable in 2005 was a "significant factor" in his
11 ultimate sentence while ignoring the other significant factors contributing to his lengthy sentence,
12 including: his *other* prior convictions, his role in the conspiracy, and the amount of
13 methamphetamine at issue in this case.

14 Aside from the purported "disparity," the only argument Gonzalez makes for his release is
15 the evidence of his rehabilitation. The Court has reviewed Gonzalez's impressive educational
16 records and scarce disciplinary history and commends Gonzales for these achievements.
17 However, rehabilitation alone cannot justify relief under § 3582. *See* 28 U.S.C. § 994(t); U.S.S.G.
18 § 1B1.13, cmt. n.3. On this record, Gonzalez has not met his burden to demonstrate "extraordinary
19 and compelling" reasons for relief under § 3582.

20 **C. § 3553(a) Factors**

21 Because the Court concludes that Gonzalez's request is not supported by "extraordinary
22 and compelling" reasons, the Court need not reach the § 3553(a) sentencing factors. *See United*
23 *States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021) ("[A]lthough a district court must perform this
24 sequential inquiry before it grants compassionate release, a district court that properly denies
25 compassionate release need not evaluate each step.").

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CONCLUSION

For the reasons discussed above, Gonzalez's motion for compassionate release (Doc. 656) is **DENIED**.

IT IS SO ORDERED.

Dated: December 27, 2022

Jennifer L. Thurston
UNITED STATES DISTRICT JUDGE